Paper No. 38

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RICHARD A. NAZARIAN,
DIRK R. SMITH, JAMES R. WATTS,
TIMOTHY J. KRIEWALL and RICHARD A. GRIEWSKI

Appeal No. 2004-1546
Application No. 09/030,989

ON BRIEF

Before BARRETT, WARREN and JEFFREY T. SMITH, ***Administrative Patent Judges***.

JEFFREY T. SMITH, ***Administrative Patent Judge.***

DECISION ON APPEAL

Applicants appeal the decision of the Primary Examiner finally rejecting claims 16 to 38, all of the pending claims in the above identified application. We have jurisdiction under 35 U.S.C. § 134.[1]

[1] In rendering this decision, we have considered Appellants' arguments presented in the Brief filed September 24, 2003.

BACKGROUND

Appellants' invention relates an adapter pod for use in a medical perfusion system having a data communications network with a plurality of connection points each having a substantially identical network connector. The adapter pod includes a common connector adapted to connect to a network connector, a device connector adapted to be connected to a perfusion device, and means for generating a message in the form of a digital data packet. (Brief, p. 2). Claim 16, which is representative of the claimed invention, appears below:

> 16. An adapter pod for use in a medical perfusion system, said medical perfusion system having a main controller and a data communications network with a plurality of connection points, each connection point having a substantially identical network connector, said adapter pod comprising:
>
> a common connector adapted to be connected to one of said identical network connectors, said common connector having a connector configuration;
>
> a device connector adapted to be connected to a perfusion device, said device connector having a connector configuration different than said connector configuration of said common connector; and
>
> means for controlling electrical power to said perfusion device and for generating messages, in the form of a digital data packet, for said main controller and said perfusion device.

CITED PRIOR ART

As evidence of unpatentability, the Examiner relies on the following references:

Schenk	5,444,626	Aug. 22, 1995
Dais et al. (Dais)	5,524,213	Jun. 4, 1996
Sites et al. (Sites)	5,730,720	Mar. 24, 1998 (filed Aug. 18, 1995)
Omori	5,820,414	Oct. 13, 1998 (filed Jun. 13, 1996)

The Examiner rejected claims 16 to 38 under 35 U.S.C. § 103(a) as obvious over the combined teachings of Dias and Omori together or in combination with Sites and Schenk; claims 23 and 30 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 to 15 of U.S. Patent 5,813,972; and claims 23 to 38 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 6 to 8 of U.S. Patent 5,813,972 in view of Sites.

OPINION

We have carefully reviewed the claims, specification and applied prior art, including all of the arguments advanced by both the Examiner and Appellants in support of their respective positions. This review leads us to conclude that the Examiner's § 103 rejection is not well founded. We reach the opposite conclusion with respect to the obviousness-type double patenting rejection.

Rather than reiterate the conflicting viewpoints advanced by the Examiner and the Appellants concerning the above-noted rejections, we refer to the Answer and the Brief.

1. Rejection under 35 U.S.C. § 103

The Examiner rejected claims 16 to 38 under 35 U.S.C. § 103(a) as unpatentable over the combined teachings of Dias and Omori together or in combination with Sites and Schenk. We will limit our discussion to claims 16, 18, 21, 23 and 30, the only independent claims.

According to the Examiner, Dias discloses a system that is suitable for a medical communication system that includes a bus, interface units and peripheral units. However, Dias does not show different coupling means for coupling to the bus and the peripheral units. (Answer, p. 3). Omori

is said to describe an adapter pod that connects a circuit board to a bus utilizing different coupling means for the circuit board and the bus. The Examiner asserts that Omori provides power to slave devices through the adapter. (Answer, p. 4).

Assuming that the Examiner's description of the prior art is correct, the combination of prior art relied upon by the Examiner does not render the claimed subject matter *prima facie* obvious. The subject matter of claims 16, 18 and 21 requires, *inter alia*, that the adapter pod includes a controller or means for controlling electrical power to a perfusion device and for generating messages for the perfusion device and a main controller of the medical perfusion system. We agree with Appellants, Brief page 12 and 14, that Dias and Omori do not disclose or suggest a means for generating messages for both to the main controller and perfusion device as required by claims 16, 18 and 21. The Examiner did not rely on the Sites and Schenk references for teaching these limitations of the claimed invention.

The subject matter of claims 23 and 30 requires, *inter alia*, that the adapter pod includes a first connector coupled through a data bus to a communication network of a medical perfusion system, a second

connector coupled to a perfusion system via a data line and a means for controlling or receiving signals over the data line. Thus, the subject matter of claims 23 and 30 requires the adapter pod to manipulate the data transmitted through the adapter pod. The Examiner asserts that Dias and Sites were cited for teaching a network of medical perfusion devices and that Omori was cited for teaching an adapter pod that acts as an interface between a network and a slave device. (Answer, p. 16). We agree with Appellants, Brief page 12 and 15, that Dias and Omori do not disclose or suggest controlling or receiving signals over the data line as required by claims 23 and 30. There is no indication that the data transmitted through the adapter of Omori is manipulated by the adapter. Here again, the Examiner did not rely on the Sites and Schenk references for teaching these limitations of the claimed invention.

For the reasons presented above and in the brief, we reverse the rejection of claims 16 to 38 under 35 U.S.C. § 103(a) as unpatentable over the combined teachings of Dias and Omori together or in combination with Sites and Schenk.

2. Obviousness-type double patenting

The Examiner rejected claims 23 and 30 under the judicially created doctrine of obviousness-type double patenting as unpatentable over claims 1 to 15 of U.S. Patent 5,813,972. We affirm.

Appellants assert that the Examiner restricted the claimed subject matter directed to a medical perfusion device from the claimed subject matter directed to an adapter pod. Specifically, Appellants state "[i]t is respectfully submitted that the restriction by the Examiner in the parent application prevents claims 16-38 from being rejected under the judicially created doctrine of double patenting. Furthermore, Applicants respectfully point out that a terminal disclaimer was filed on July 8, 2002." (Brief, p. 24).

Appellants' arguments are not persuasive. We first note that this rejection is limited to claims 23 and 30. The scope of the subject matter of claims 23 and 30 does not include the features that the Examiner identified as the basis of restricting the subject matter of claims 16 and 17 from the parent application.[2] Thus, we agree with the Examiner, Answer page 32,

[2] The restriction requirement in the parent application restricted the claimed subject matter directed to an adapter pad having connectors with a particular configuration, from the claimed subject matter directed to a medical

that the subject matter of instant claims was not subject to the restriction requirement in the parent application. We also agree with the Examiner that Appellants' terminal disclaimer, filed on July 8, 2002, does not identify U.S. Patent 5,813,972, which is the basis of this rejection. (Answer, p. 32).

The Examiner rejected claims 23 to 38 under the judicially created doctrine of obviousness-type double patenting as unpatentable over claims 1, 6 to 8 of U.S. Patent 5,813,972 in view of Sites. We affirm.

Appellants assert that the restriction is erroneous based upon MPEP 804. In support of this position, Appellants assert "that claims 1 and 6-8 of patent application U.S. Patent No. 5,813,972 are directed to a medical perfusion system and not to an adapter pod as claimed in claims 23-38." (Brief, p. 24).

Appellants' arguments are not persuasive. We agree with the Examiner Answer pages 32 and 33, that the Appellants' arguments do not explicitly address the rejection presented. Specifically, Appellants have not addressed the Sites reference that the Examiner cited for teaching a medical perfusion system. Further, Appellants' argument that the restriction is erroneous based upon MPEP 804 does not explicitly address the

---

perfusion system. The subject matter of claims 23 and 30 does not further describe an adapter pad having connectors with particular a configuration.

rejection presented. Appellants have failed to provide specific arguments identifying the specific portions of MPEP 804 which have not been met by the Examiner's rejection.

Based on our consideration of the totality of the record before us, we affirm the rejection of claims 23 and 30 under the judicially created doctrine of obviousness-type double patenting as unpatentable over claims 1 to 15 of U.S. Patent 5,813,972; and claims 23 to 38 under the judicially created doctrine of obviousness-type double patenting as unpatentable over claims 1, 6 to 8 of U.S. Patent 5,813,972 in view of Sites.

CONCLUSION

The rejection of claims 16 to 38 under 35 U.S.C. § 103(a) as obvious over the combined teachings of Dias and Omori together or in combination with Sites and Schenk is reversed. The rejection of claims 23 and 30 under the judicially created doctrine of obviousness-type double patenting as unpatentable over claims 1 to 15 of U.S. Patent 5,813,972; and of claims 23 to 38 under the judicially created doctrine of obviousness-type double patenting as unpatentable over claims 1 and 6 to 8 of U.S. Patent 5,813,972 in view of Sites are affirmed.

Time period for response

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

LEE E. BARRETT ***Administrative Patent Judge***	)
CHARLES F. WARREN ***Administrative Patent Judge***	) **BOARD OF PATENT APPEALS AND INTERFERENCES**
JEFFREY T. SMITH ***Administrative Patent Judge***	)

JTS/kis

BURNS, DOANE, SWECKER & MATHIS, LLP
POST OFFICE BOX 1404
ALEXANDRIA, VA 22313-1404